Supreme Court, U. S.
FILED
MAY 1 1980
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1033

WEBBS FABULOUS PHARMACIES, INC., AND ECKERD'S OF COLLEGE PARK, INC., *et al.*,
Appellants,

VS.

ARTHUR H. BECKWITH, JR., CLERK OF THE CIRCUIT COURT AND SEMINOLE COUNTY, FLORIDA,
Appellees.

AN APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

JURISDICTIONAL STATEMENT FILED DECEMBER 31, 1979
PROBABLE JURISDICTION NOTED MARCH 17, 1980

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IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR SEMINOLE COUNTY — CIVIL ACTION

ECKERD'S OF COLLEGE PARK, INC. Plaintiff,	:	NO. 76-354-CA-17-EE
vs.	:	JUDGE
WEBB'S FABULOUS PHARMACY, INC., et al., Defendants.	:	DOMINICK J. SALFI

FINAL ORDER OF INTERPLEADER

Final hearing upon Plaintiff's Complaint for Interpleader having come up for hearing on this date upon due notice, and the Court having considered the evidence presented at this hearing, the pleadings and discovery in the Court file, the arguments and representations made by counsel present at the hearing, and the Court being otherwise advised in the premises, finds:

1. The Plaintiff is holding $1,812,145.77, together with accrued interest thereon, as to which it disclaims any interest except to receive unencumbered title to the assets described in the Purchase Agreement dated February 12, 1976 between the Plaintiff and Defendant, WEBB'S FABULOUS PHARMACIES, INC. ("Webb's"), free and clear of all claims of creditors of the Defendant, Webb's, save and except for those obligations which it agreed to assume pursuant to the terms of the said Purchase Agreement.

2. The Defendants in this case either have or may assert conflicting claims to the moneys described in Paragraph 1

above, and Plaintiff cannot safely determine the validity, amount or priority of all said claims.

3. The Plaintiff has paid fair consideration for the assets described in the aforesaid Purchase Agreement and has compiied with all the requirements of the bulk sales law as set forth in Chapter 676, Florida Statutes 1975.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. Plaintiff shall henceforth hold the $1,812,145.77 described in the Complaint for Interpleader, together with accrued and accruing interest thereon, pending further order of this Court, and the same shall be deemed to be held IN CUSTODIA LEGIS.

2. Plaintiff has acquired unencumbered title to the assets which it purchased from the Defendant, Webb's, pursuant to the aforesaid Purchase Agreement, free and clear of all claims and liens of the creditors of the Defendant, Webb's, and Plaintiff is hereby relieved and discharged from any liabilities and obligations to any of the Defendants herein which arise out of the transactions contemplated by said Purchase Agreement, save and except for those obligations which the Plaintiff agreed to assume pursuant to the terms of the said Purchase Agreement.

3. It is further ORDERED that the Defendants be, and they hereby are directed, to interplead and litigate in this proceeding their several claims to the moneys hereinabove described.

4. All of the Defendants in this cause be and they hereby are restrained and enjoined from instituting or prosecuting in any court, any suit or action of any kind against the Plaintiff on account of or arising out of the transactions

contemplated by the Purchase Agreement, or from instituting or prosecuting in any court any suit or action of any kind against the assets purchased by the Plaintiff pursuant to the Purchase Agreement.

5. This Court reserves decision as to Plaintiff's right to be paid an attorney's fee, or reimbursed for its costs in connection with this proceeding out of the aforesaid moneys, and as to the payment of interest upon said moneys and a hearing is hereby set before this Court, in Chambers, on *June 24, 1976 at 10:00 A.M.,* for the purpose of determining and adjudicating these issues.

DONE AND ORDERED in Chambers in Sanford, Seminole County, Florida, this 15th day of June, A.D. 1976.

/s/ D.J. Salfi
D.J. Salfi
CIRCUIT JUDGE

Copies furnished to:

ALL PARTIES OF RECORD

[Title Omitted In Printing]

ORDER

This cause came on to be heard upon the motion of the plaintiff, Eckerd's of College Park, Inc., for directions with respect to the investment of the funds held by the plaintiff pursuant to the order entered by this court on June 15, 1976, and it appearing to the court that the present investment of such funds matures on July 13, 1976 and the court being fully advised in the premises, it is therefore

ORDERED AND ADJUDGED THAT:

1. The plaintiff, Eckerd's of College Park, Inc., is hereby authorized and directed to withdraw the aforesaid funds immediately upon maturity of the existing investment and to transfer and deliver the entire fund including all interest and earnings thereon forthwith to the Clerk of the Circuit Court of Seminole County.

2. The Clerk of the Circuit Court is hereby authorized and directed, immediately upon receipt of said funds to deposit the same in an assignable interest bearing account at the highest interest obtainable by bid for a term not to exceed 90 days, subject to further order of this court.

3. Upon transfer of the funds to and receipt therefor by the Clerk of the Circuit Court, the plaintiff, Eckerd's of College Park, Inc., shall be relieved and discharged from further obligation or liability arising out of the custody and investment of such funds.

4. The court reserves ruling over the issue of whether the interest earned on the fund invested by the Clerk of the Circuit Court shall accrue to the benefit of the Clerk's of-

fice or to the benefit of the creditors of Webb's Fabulous Pharmacies, and the transfer to and investment by the Clerk of the Circuit Court shall be wholly without prejudice to the claim of the creditors to the earnings from the invested funds and the Clerk of the Circuit Court shall not, by reason of the receipt of said funds or the earnings thereon, have any greater claim thereto than before such receipt.

DONE AND ORDERED in Chambers at Sanford, Seminole County, Florida, this 12th day of July, 1976.

/s/ D.J. Salfi
D.J. SALFI
Circuit Judge

Copies to all parties

[Title Omitted In Printing]

NOTICE OF DEPOSIT

COMES NOW, ECKERD'S OF COLLEGE PARK, INC., by and through its undersigned attorneys, and states that on July 13, 1976 the sum of ONE MILLION EIGHT HUNDRED FORTY-FIVE THOUSAND AND TWO HUNDRED FORTY-SEVEN AND 77/100 DOLLARS ($1,845,247.77) was deposited with the Clerk of the Circuit Court in and for Seminole County, Florida pursuant to Order of this Court. Attached hereto and by reference made a part hereof is a copy of the Cashier's Check deposited with the Clerk and a copy of the receipt issued by said Clerk.

I HEREBY CERTIFY that a copy of the foregoing has been furnished, by mail, to the parties of record, on this the 13th day of July, 1976.

SHACKLEFORD, FARRIOR, STALLINGS & EVANS, P.A.
Post Office Box 3324, Tampa, Florida 33601
Attorneys for ECKERD'S OF COLLEGE PARK, INC.

By /s/ Benjamin H. Hill
BENJAMIN H. HILL, III

(Referenced Exhibits Omitted In Printing)

[Title Omitted In Printing]

ORDER

This cause came on to be heard before the Court on May 25, 1977, upon the several motions and other matters disposed of herein. Upon consideration of the motions and argument of counsel and the Court being fully advised, it is thereupon:

ORDERED:

1. That until further order of this Court, service of copies of this Order and all future pleadings, motions, orders and other papers in this cause shall be served only upon the parties and/or attorneys listed in Schedule "A" attached hereto, and upon the Receiver appointed herein, provided that any pleading, motion or order directed to, seeking relief against, or otherwise directly affecting any party not listed in Schedule "A", shall in addition be served upon such affected party.

2. The objections of the Defendant, Nancy Kunze as Trustee in Bankruptcy of Webb's Fabulous Pharmacies, Inc., and the Defendant, McKesson and Robbins, Inc., to the claim of American Heritage Life Insurance Company and the Counterclaim and Cross-Claim set forth therein, and all other objections, pleadings and motions directed to the claim of American Heritage Life Insurance Company and/or Webb's Fabulous Pharmacies, its officers or directors, arising out of such claim, are hereby denied, stricken, or dismissed, as the case may be, without prejudice to those objections, motions and claims being refiled as hereinafter set forth.

3. Upon the Court's own motion, the claim of American Heritage Life Insurance Company to the fund of money

held in the Registry of this Court as set forth in the Answer of American Heritage Life Insurance Company filed on April 13, 1976 (Pleading No. 449), is hereby stricken from said Answer and American Heritage may, within 20 days of the date of this Order, file and serve a separate pleading setting forth its claim to the interpleader funds.

4. The Defendant, Nancy Kunze as Trustee in Bankruptcy for Webb's Fabulous Pharmacies, Inc., McKesson and Robbins, Inc., and/or any other party to this action may within 20 days after service of the claim of American Heritage, plead in response to such claim by motion, answer, or affirmative defense, as they may be advised in accordance with the Rules of Civil Procedure. Any party seeking to file any counterclaim, cross-claim or seeking any other affirmative relief against American Heritage or any other party may file and serve such claim by separate pleading filed and served no later than 20 days after service of the American Heritage claim.

5. The Clerk of the Circuit Court is hereby directed to prepare and file an accounting with respect to the interpleader funds deposited in the Registry of this Court on July 13, 1976, and any interest earned thereon, which accounting shall run through May 31, 1977. A copy of such accounting shall be served upon each of the parties listed in Schedule "A" attached hereto and to the Receiver appointed herein.

6. Upon the Court's own motion and in exercise of the Court's inherent power and jurisdiction, the Court hereby appoints *Harvey M. Alper, 165 Whooping Loop, Altamonte Springs, Florida, 32771,* a member of the Florida Bar, as Receiver with the following powers, rights and duties:

A. The Receiver herein appointed shall, with all convenient speed, examine the file in this cause and determine from the file and the pleadings therein the number and amount of claims filed against the fund in interpleader and shall prepare and file with this Court and serve upon the parties shown on Schedule "A", a list of such claims which shall identify the claimant, the amount of the claim, and whether the claim is or purports to be secured or unsecured and the nature of the security for such claim.

B. The Receiver shall as soon as practicable, make such investigation as he deems necessary and, based upon such investigation, propose to the Court the establishment of such account or accounts in such institution or institutions which may qualify for designation pursuant to Florida Statute §69.031, as will obtain the maximum return upon the interpleader fund on behalf of the creditors. Upon the deposit of and the receipt for the funds in such institution or institutions as may be designated by the Court pursuant to the proposal of the Receiver or the determination of the Court, the Receiver's bond shall be waived and no bond shall be required of him to qualify to enter upon his office and the exercise of his powers and duties herein.

C. The Receiver shall have and exercise such authority, powers and duties as are granted herein and as may be from time to time granted by order of this Court upon the Court's own motion or upon application by the Receiver.

DONE and ORDERED in Chambers at Sanford, Seminole County, Florida, this 5th day of July, 1977.

/s/ D.J. Salfi
D.J. SALFI
CIRCUIT JUDGE

Copies furnished to all parties
listed on Schedule "A" attached
hereto.

[Schedule "A" Of Those Served Omitted In Printing]

[Title Omitted In Printing]

MOTION FOR DIRECTIONS
TO CLERK AND APPROVAL
OF (TEMPORARY) DEPOSITORY

COMES NOW HARVEY M. ALPER, Receiver in the above-captioned cause and moves the Court to direct the Clerk to deliver to such Receiver the interpleader funds held by the Clerk (in Registry) in the above-captioned cause, and to approve the Receiver's temporary depository for such funds, and as grounds therefore would show unto the Court as follows:

1. On July 21, 1977, the interpleader funds in this cause will mature in certificates of deposit held by the Clerk of this Court.

2. Unless such funds are on July 21, 1977, delivered to the Receiver, the Clerk will reinvest the same in further certificates of deposit, making such monies virtually inac-

cessible for from thirty (30) to ninety (90) days from said date.

3. The Clerk of the Court maintains all interest earned on such interpleader funds is to be remitted to the Clerk for the benefit of Seminole County, Florida, and use in such County's general revenue or other like-type funds.

4. Should the Clerk's position as to interest described in the immediately foregoing paragraph be sustained (pursuant to the provisions of *Florida Statutes,* Chapter 28), the parties to this cause will be deprived not only of all interest heretofore earned on the interpleader funds but also on all interest earned after July 21, 1977, upon such monies.

5. If the interpleader funds are delivered to the Receiver forthwith, all interest upon such funds will hereinafter accrue to the benefit of the parties to this cause and the County's claim thereto will terminate.

6. The Receiver intends to deposit such funds, upon their delivery to him, in short term (45 days or less) certificates of deposit in Seminole County, Florida, commercial banks. Thereafter, the Receiver will explore alternate investments of such funds which will maximize the interest to accrue for the benefit of the parties hereto. Such alternate investments include government bonds and longer term certificates of deposit.

7. The Receiver expects that he will question the Clerk's claim to all interest hereinbefore accrued. The Receiver anticipates that a hearing upon such issue will be scheduled before this Court at a later date.

8. The Receiver expects to invest the interpleader funds at a rate of return of not less than five (5%) percent per annum. The maximum yield now being earned by the

Clerk on longer length 101 day certificates of deposit is 4.81%.

9. The Receiver proposes to deposit the interpleader funds either in any one or more than one of the following banks:

Pan American Bank	–	Altamonte Springs
Barnett Bank	–	Altamonte Springs
Com Bank	–	Casselberry

10. The Receiver proposes to deposit THREE THOUSAND ($3,000.00) DOLLARS of the interpleader funds in a checking account upon which the Receiver may draw to meet the expenses incurred by him in the course of his duties. Further, as to such sum, the Receiver proposes that his bond continue to be waived.

11. Time does not permit that notice of this Motion be given to all concerned in advance of the Court's consideration hereof.

WHEREFORE, the Receiver prays as follows:

A. That the Court direct the Clerk to deliver the interpleader funds, exclusive of accrued interest, to the Receiver upon July 21, 1977.

B. That the Court reserve ruling upon the rightful party entitled to the accrued interest earned upon the interpleader funds and direct the Clerk to hold such sums in the Registry of the Court in interest bearing accounts or certificates, until the Court makes a determination as to the same.

C. That the Court designate the following financial institutions qualified to each hold all or parts of the interpleader funds:

Pan American Bank	–	Altamonte Springs
Barnett Bank	–	Altamonte Springs
Com Bank	–	Casselberry

D. That the Court continue to waive the Receiver's bond.

E. That the Court authorize the Receiver to deposit THREE THOUSAND ($3,000.000) DOLLARS of the interpleader funds at any one or more of the banks above-named and in a checking account(s) upon which the Receiver may draw to meet the expenses incurred by him in the course of discharging his duties.

LAW OFFICES OF ALPER & WACK

BY: /s/ Harvey M. Alper

HARVEY M. ALPER
165 Whooping Loop
Altamonte Springs, Florida 32701
Receiver
Telephone 305/831-4339

[Certificates Of Service Omitted In Printing]

[Title Omitted In Printing]

ORDER WITH DIRECTIONS TO CLERK AND APPROVING (TEMPORARY) DEPOSITORY, ETC.

THIS CAUSE having come on to be heard by the Court, without argument or the presence of counsel, upon the Receiver's Motion for Directions To Clerk and Approval of (Temporary) Depository, and the Court having examined the official Court file and being otherwise fully advised in the premises, it finds as follows:

A. Time did not permit the tender of notice of hearing upon the Receiver's above-named Motion to all concerned.

B. The actions sought to be approved by the Receiver in his Motion for Directions To Clerk and Approval of (Temporary) Depository are for the benefit of all parties to this cause.

WHEREFORE, It is ORDERED AND ADJUDGED as follows:

1. The Clerk of this Court shall deliver the interpleader funds, exclusive of accrued interest, to the Receiver upon July 21, 1977.

2. The Court reserves ruling upon the rightful party entitled to the accrued interest earned upon the interpleader funds and therefore directs the Clerk to hold such sums in the Registry of the Court, in interest bearing accounts or certificates, until the Court makes a determination as to the same.

3. The Court designates the following financial institutions qualified to each hold all or parts of the interpleader

funds (provided they comply with the provisions of *Florida Statutes,* §69.031):

Pan American Bank	–	Altamonte Springs
Barnett Bank	–	Altamonte Springs
Com Bank	–	Casselberry

Such funds shall be held initially in short term (45 days or less) certificates of deposit.

4. The Receiver's bond shall continue to be waived.

5. The Receiver may deposit THREE THOUSAND ($3,000.00) DOLLARS of the interpleader funds at any one or more of the banks above-named in a checking account(s) upon which the Receiver may draw to meet the expenses incurred by him in the course of discharging his duties.

6. The Receiver shall report back to the Court upon future possible investments of the interpleader funds.

DONE AND ORDERED in Chambers, Seminole County Courthouse, Sanford, Florida, this 19th day of July, 1977.

/s/ D. J. Salfi
Dominick J. Salfi, Circuit Judge

[Certificate Of Service Omitted In Printing]

[Title Omitted In Printing]

MOTION FOR ASSISTANCE AND INSTRUCTIONS

COMES NOW Harvey M. Alper, Receiver, and files this his Motion for Assistance and Instructions and shows unto the Court that he requires guidance in the several respects hereinafter set forth.

1. The Receiver is under a duty to "examine the file in this cause and determine from the file and the pleadings therein the number and amount of claims filed against the fund in interpleader and . . . (to) prepare and file with this Court and serve upon the parties shown in Schedule 'A', a list of such claims which shall identify the claimant, the amount of the claim, and whether the claim is or purports to be secured or unsecured and the nature of security for such claim." The Receiver would show unto the Court that the file in this cause is presently some thirteen volumes in length and growing almost daily. Such file may not be removed from the Seminole County Courthouse for more than two days at a time. To perform as required of him as aforesaid, the Receiver requires that he be permitted to remove all or part of such thirteen volumes from said Courthouse for extended periods in excess of two days so that he may make the necessary compilation. Further, with regard to such compilation, the Receiver requires instructions in the following particulars:

a. Is the Receiver to express any opinion to the Court on the validity of such claims, in law or in fact, or upon the validity of purported security therefore, if any?

b. Is the Receiver to limit his inquiry to the four corners of the Court file or is he empowered to make such additional investigations and incur

such consequential expenses of such investigation into facts and circumstances beyond the scope of the Court file itself as he may deem necessary?

2. The Receiver is aware of the fact that certain interpleader claims have or may be filed herein to which an Answer may be required. The Receiver believes that his role is that of an impartial third party and that he should not be required to Answer such claims or otherwise become involved with regard to the merits of this case. Notwithstanding the foregoing, the Receiver requests the Court's instructions as to whether or not the Court expects the Receiver to in any way become involved in an advocacy capacity as to the merits of this cause.

3. It has been suggested to the Receiver that he pay certain claims for taxes forthwith. The Receiver wishes instruction from the Court as to whether or not there are any claims, including claims for taxes, which the Receiver should pay forthwith and without further (detailed) instruction from the Court.

4. At the suggestion of the Clerk of this Court the Receiver has deposited the interpleader monies with an institution willing to make a "pledge of security" therefore. The Receiver advises the Court that in obtaining a "pledge of security" the Receiver must, of necessity, agree to accept a lower interest rate than would otherwise be paid upon the interpleader fund. Further, the Receiver could increase the return available on the interpleader fund by investing the same for periods of maximum possible length. The Receiver could also possibly increase the yield on such funds by purchasing U.S. Treasury notes rather than dealing with a financial institution designated under *Florida Statutes* 69.031. Consequently, the Receiver asks as follows:

a. Should the Receiver insist on a pledge of security for the interpleader fund or may such monies be invested without such security in otherwise approved institutions?

b. What is the maximum practical length for which the Receiver may commit and invest the interpleader funds?

c. May the Receiver purchase U.S. Treasury notes direct rather than deal with a financial institution designated under *Florida Statutes* 69.031?

5. The Clerk of this Court has refused to remit to the Receiver in excess of NINETY ONE THOUSAND ($91,000.00) DOLLARS which sum constitutes all interest earned upon the interpleader fund while the same remained in the Clerk's custody. The Clerk cites *Florida Statutes* 28.33 as authority for such action. The Receiver believes that such action by the Clerk may be improper and therefore inquires of the Court as follows:

a. Should the Receiver institute a separate action against Arthur Beckwith, Jr., as Clerk of this Court, for payment over to the Receiver of the interest above-mentioned?

b. Should the Receiver institute and will the Court entertain a motion in the present proceedings for an order directing the said Clerk to remit to the Receiver the interest above-mentioned?

c. Should the Receiver do nothing with regard to the interest on the interpleader fund which has been retained by the said Clerk?

6. The Receiver requires authority and authorization to charge the interpleader fund for direct expenses incurred by him in this cause and requests that the Court instruct that he may be paid by such fund, from time to time and without further application to the Court, for postage, photocopies, travel and like and similar type expenses, reporting such expenditure to the Court periodically.

WHEREFORE, the Receiver files this his Motion for Assistance and Instructions and requests that the Court give him the guidance herebefore requested.

/s/ Harvey M. Alper
HARVEY M. ALPER, ESQUIRE
165 Whooping Loop
Altamonte Springs, Florida
As Receiver
Telephone 305/831-4339

[Certificate Of Service Omitted In Printing]

[Title Omitted In Printing]

ORDER

THIS CAUSE having come onto be heard on the Receiver's Motion for Assistance and Instructions on the 11th day of August, 1977, at 4:15 P.M., and the Receiver having appeared before the Court by telephone, and attorneys for interested parties having been present before the Court, and the comments and arguments of counsel having been heard, it is ordered and adjudged as follows:

1. The Receiver may remove the official Court file in this cause, or any one or more volumes thereof, from the Courthouse at Sanford to his office and places of work for periods not to exceed seven (7) consecutive days per volume.

2. The Receiver shall report back to the Court, at the earliest practical date, and shall advise the Court in written form of the name of each claimant in this cause, the date such claimant's claim was filed with the Court, the purported basis of such claim and whether or not the claim purports to be secured or unsecured and whether or not some other priority interest is asserted.

3. The Receiver shall not, without further permission of the Court, employ any outside investigator to assist him in his work in this cause.

4. The Receiver has inquired of the Court at numbered paragraph 2 of his Motion for Assistance and Instructions as to whether or not the Court expects the Receiver to in any way become involved in an advocacy capacity as to the merits of this cause. Such question is answered in the negative and the Receiver shall conduct himself accordingly.

5. The Receiver shall endeavor to pay off all claims of Florida County Governments for tangible personal property taxes at the earliest practical date. Toward such end, the Receiver shall contact each concerned County Tax Collector, confirm the amount of tax claimed due, and thereafter make such necessary and appropriate arrangements as are indicated to satisfy valid tax claims.

6. The Receiver shall not invest the receivership funds other than pursuant to *Florida Statute* 69.031, and toward such end the Receiver shall not directly invest in and purchase for his own account U.S. Treasury Notes.

7. The Receiver shall continue to endeavor to invest the receivership funds in secured situations and the Receiver shall make no investment of receivership funds without a pledge of security for such funds from the financial institution designated pursuant to *Florida Statute* 69.031.

8. Until such time as the Receiver has reported to the Court upon alternate or preferred investments of the receivership funds, the Receiver is authorized to and shall leave on deposit with the Barnett Bank of Seminole, N.A., 460 East Altamonte Drive, Altamonte Springs, Florida, the receivership funds, upon essentially the same terms as set forth in the receipt of the depository heretofore filed with this Court. The foregoing notwithstanding, the Receiver shall endeavor to obtain increased yield upon such registry funds.

9. The Receiver shall institute and the Court will consider entertaining a Motion in the present proceedings for an Order directing the Clerk of this Court to remit to the Receiver the sum of approximately NINETY-ONE THOUSAND ($91,000.00) DOLLARS, which sum constitutes all interest earned upon the interpleader fund while the same remained in the Clerk of this Court's custody,

and to which fund the Clerk of this Court asserts a right pursuant to *Florida Statute* 28.33.

10. The Receiver is herewith authorized to charge the interpleader fund for direct expenses incurred by him in this cause and he may pay from such fund from time to time, sums for postage, photocopies, travel and like and similar type expenses, provided, however, that such expenditures from the interpleader funds shall be reported to this Court every sixty (60) days if and when the same are made.

DONE AND ORDERED at the Courthouse in Sanford this 26th day of August, 1977.

D.J. Salfi
CIRCUIT JUDGE

[Certificate Of Service Omitted In Printing]

[Title Omitted In Printing]

MOTION FOR DIRECTION TO CLERK TO REMIT CERTAIN MONIES TO RECOVER

COMES NOW Harvey M. Alper, Receiver in the above captioned cause, and moves the Court to direct the Clerk of this Court to deliver to such Receiver the sum of NINETY-ONE THOUSAND FOUR HUNDRED SEVENTY-FOUR AND 71/100 ($91,474.71) DOLLARS, which sum constitutes all interest earned upon the interpleader fund in this cause while the same remained in the custody of the Clerk of this Court, and as grounds therefore would show unto the Court as follows:

1. The only compensation to which the Clerk of this Court is properly entitled has heretofore been paid to the Clerk, such sum being a statutory fee of one (1%) per cent on the first five hundred dollars placed with the Clerk and a statutory fee of one-half (1/2) per cent of the balance placed on deposit with the Clerk. Such fee is calculated upon the principal sum originally placed in the registry of the Court.

2. The Clerk's claim to the interest earned upon the registry funds is apparently asserted upon the basis of Florida Statute §28.33. Such statute, however, pertains only to the investment of County funds and funds placed with the Clerk in the registry of the Court are not County funds as such and thus such registry funds and the interest earned thereon may not be "deemed income of the office of the Clerk of the Circuit Court investing such monies" within the meaning and intent of Florida Statute §28.33.

3. There is no case law within the State of Florida supporting the Clerk's position that he is entitled to retain the interest upon the registry funds as income of his office.

4. The provisions of Florida Statute §28.33 regarding the deposit of registry monies to the effect that "monies deposited in the registry of the Court shall be deposited in interest-bearing certificates of the discretion of the Clerk, subject to the above guidelines" in no way incorporates the language which follows in such statute that "all interest accruing from monies deposited shall be deemed income of the office of the Clerk of the Circuit Court." The latter language refers to public monies *only*. Furthermore, the reference to registry funds in Florida Statute §28.33 is not intended to make privately placed interpleader or registry funds public funds. Instead, it is intended, to establish a specific standard of conduct – one that directs that the

Clerk shall handle all monies placed with him in the registry of the Court at the same high standard as if the same were County Funds, holding such monies [in] sacred trust and in protected investments. [sic]

WHEREFORE, the undersigned Receiver requests that this Court enter an Order instructing the Clerk of this Court, Arthur H. Beckwith, Jr., to deliver to him the sum of $91,474.71 for deposit by the Receiver in interest-bearing accounts for the benefit of creditors herein. Further, the undersigned Receiver requests that this Court also Order that the Clerk deliver to him all interest accrued upon such $91,474.71 since July 21, 1977.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to all individuals on Schedule "A" attached hereto as well as to Arthur H. Beckwith, Jr., Seminole County Courthouse, Sanford, Florida, this 15th day of September, 1977.

LAW OFFICES OF ALPER AND WACK

BY: /s/ Harvey M. Alper
HARVEY M. ALPER, ESQUIRE
165 Whooping Loop
Altamonte Springs, Florida 32701
As Receiver
Telephone 305/831-4339

[Schedule "A" Of Those Served Omitted In Printing]

[Title Omitted In Printing]

NOTICE OF TEMPORARY WITHDRAWAL OF MOTION FOR DIRECTION TO CLERK TO REMIT CERTAIN MONIES TO RECEIVER

TO: All those individuals listed
on attached Schedule A

PLEASE TAKE NOTICE that the Motion For Direction To Clerk To Remit Certain Monies To Receiver filed by the undersigned on September 15, 1977, is herewith temporarily withdrawn. The Receiver anticipates that a lengthier speaking motion on the same subject matter, wherein constitutional issues will be raised with specificity, will be filed with the Court in the near future.

PLEASE GOVERN yourself accordingly.

DATED this 7th day of November, 1977.

LAW OFFICES OF ALPER & WACK

BY: /s/ Harvey M. Alper
HARVEY M. ALPER, ESQUIRE
165 Whooping Loop
Altamonte Springs, Florida 32701
Telephone 305/831-4339
As Receiver

[Certificate of Service and Schedule A
of Those Served Omitted In Printing]

[Title Omitted In Printing]

RECEIVER'S FIRST AMENDED MOTION FOR DIRECTION TO CLERK TO REMIT CERTAIN MONIES TO RECEIVER

COMES NOW Harvey M. Alper, Receiver in the above-captioned cause and moves the Court to direct the Clerk of this Court to deliver to such Receiver the sum of $91,474.71, plus all accrued interest thereon from date of July 21, 1977, which sum constitutes all interest earned upon the interpleader fund while the same remained in the custody of the Clerk of this Court (as well as all compounded interest from July 21, 1977, forward), and as grounds therefore would show unto the Court as follows:

1. The only compensation to which the Clerk of this Court is properly entitled has heretofore been paid to the Clerk, such sum being a statutory fee of one (1%) per cent on the first $500.00 placed on deposit with the Clerk and a statutory fee of one-half (1/2%) per cent of the balance placed with the Clerk. Such fee is calculated only upon the principal sum originally placed in the registry of the Court pursuant to *Florida Statute* §28.24.

2. The Clerk's claim to the interest earned upon the registry funds is apparently asserted upon the basis of *Florida Statute* §28.33. Such Statute, however, pertains only to the investment of County funds. Funds placed with the Clerk in the registry of the Court are not County funds as such and thus such registry funds and the interest earned thereon may not be "deemed income of the Clerk of the Circuit Court investing such monies" within the meaning and intent of *Florida Statute* §28.33. Indeed, the title of such Statute is "Investment of county funds." Registry monies are not even mentioned. Further the

Statute does not include registry funds with County funds by its own express terms. Rather, after outlining the basis upon which County funds are to be invested, the Statute states (almost parenthetically) and in a separate and distinct sentence, "Money deposited in the registry of the court shall be deposited in interest-bearing certificates at the discretion of the clerk, subject to the *above guidelines.*" (Emphasis Added) The balance of the Statute speaks to County funds and, at best, can be called, as the Statute itself says, a "guideline" – but not an imperative – as to the terms upon which registry funds may be invested.

3. It is further and similarly urged that the provisions of *Florida Statute* §28.33 regarding the deposit of registry monies which states that "monies deposited in the registry of the Court shall be deposited in interest bearing certificates at the discretion of the Clerk, subject to the above guidelines" in no way incorporates the language which follows in such Statute that "all interest accruing from monies deposited shall be deemed income of the office of the Clerk of the Circuit Court." The latter language refers to public monies *only.* The reference to registry funds in *Florida Statute* §28.33 does not make privately placed funds subject to temporary public custody into public funds – for such would be a taking of private property without due process of law. Instead, the Statute establishes a standard of conduct for the Clerk when he holds private monies in sacred trust. This standard happens to be the same high standard impressed upon the Clerk when he holds public funds.

4. There is no case law within the State of Florida supporting the Clerk's position that he is entitled to retain the interest upon the subject registry funds as income of his

office. Presumably the Clerk relies upon an opinion or opinions of the Attorney General as supporting his position. If applicable and existent, such opinions would at best be persuasive and are not binding upon this Court.

5. Assuming arguendo that *Florida Statute* §28.33 actually intends that all interest earned upon Court registry funds shall be retained for public use, then the same is unconstitutional on the grounds that such Statute is an invasion of the realm of the Judiciary by the Legislature. Under Florida's Constitution the Judicial power is vested in and reserved to the Courts. Under our long and well established doctrine of separation of powers the Legislature may not invade the province of the Judiciary by directing how the Judiciary shall exercise its inherent powers. The power of this Court to hold money or property in its registry, or otherwise, is such an inherent power. Were there no *Florida Statute* §28.33, the Court could still hold the registry funds held herein and the Court could do so upon such terms as it deemed just. The Legislature may not abrogate such inherent power by passing a statute which arguably and as the Clerk would here apply it, obviously, invades the province of this Court in the exercise of its inherent equitable powers. Thus, it is stated at Article II, Section 3, of the 1968 *Florida Constitution:*

> *The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.* (Emphasis Added).

It is a fundamental rule of statutory construction that wherever possible the Courts shall construe statutes in such a fashion as to protect their constitutionality in-

asmuch as it is presumed that the Legislature does [not] intend to enact any unconstitutional law. [sic]. Thus, in light of the foregoing, and in the interests of preserving its constitutionality, this Court is constrained to interpret the provisions of *Florida Statute* §28.33 as being purely guidelines to the Clerk on the care necessary when handling private registry funds and, further, as being wholly inapplicable insofar as the same might otherwise be held to mean that interest earned on registry funds is public money.

6. Assuming arguendo that *Florida Statute* §28.33 may be construed to mean that all interest earned upon Court registry funds shall be retained for public use and as public money, then such Statute must be held void for vagueness because it is, upon its face, susceptible of numerous different and conflicting interpretations and because its purpose and intent are confused and unclear. In further support of this numbered paragraph the Receiver will show to the Court, if the Court permits the Receiver to take testimony upon the strength of a separate motion filed herewith, that the Clerks of the various judicial circuits in Florida interpret and apply *Florida Statute* §28.33 in many varied and conflicting ways. Upon information and belief the Receiver advises the Court by way of example only, that Court Clerks variously:

a) refuse to invest registry monies in interest-bearing accounts at all, thereby avoiding the problem raised herewith;

b) remit interest on registry funds to the recipients of the principal sum automatically;

c) remit interest on the registry funds to the recipients of the original sum only if directed by the Court;

d) hold registry funds as the Court may direct on whatever terms and conditions the Court sees fit;

e) retain all interest on registry funds as public monies; and

f) invest registry funds in interest bearing accounts only if the Court so directs, remitting the interest thereon to private persons only if the Court so directs.

7. Upon the basis of the varied interpretations being made of *Florida Statute* §28.33, as more fully set forth at the foregoing numbered paragraph six, said Statute must be held unconstitutional as applied both because as the Clerk of this Court would apply such Statute there would be a taking of property without due process of law and because such law does not uniformly and equally protect and treat all of the citizens of this State, thereby depriving citizens of equal justice under law.

8. *Florida Statute* §28.33 is void because it violates the provisions of the 1968 *Florida Constitution,* Article III, Section 6, which provides:

> Every law shall embrace but one subject and matter properly connected therewith . . .

Florida Statute §28.33 clearly embraces two unrelated subjects — i.e. private registry money and property held by the Clerk as well as public funds held by the Court.

9. *Florida Statute* §28.33 must be read in pari materia with the provisions of the *Uniform Commercial Code* under which the instant action was brought, and particularly *Florida Statute* §676.6-106. One avowed purpose and philosophy of the pertinent portions of the Uniform

Commercial Code is to protect creditors. Thus, it is stated at *Florida Statute* §676.6-106 (1) "it is the duty of the transferee to assure that . . . consideration is applied so far as is necessary to pay those debts of the transferor." It is therefore unreasonable to interpret the two above-mentioned Statutes together if the result does not effect maximum protection of the creditors, especially where to do so would be to reach a conclusion contrary to the philosophy and tenor of a uniform and integrated act.

10. Any interpretation of *Florida Statute* §28.33 which, in this cause, would leave the creditors without the benefit of accrued interest upon the receivership funds is especially unreasonable because of the unique facts of this case. Legal title to this money passed to the creditors once the money was unconditionally paid into the Court's registry. *Phipps et al. v. Watson,* Sup. Ct. Fla. 147 So 234 (1933). Once this action occurred, the Court could immediately have named a receiver or delivered the funds to the trustee in bankruptcy, in either of which cases all accrued interest would without doubt, from that date forward, have accrued for the benefit of creditors and not the Clerk. It is unreasonable to believe that the mere act of leaving these funds with the Clerk of itself operates to reduce the funds available to the creditors by approximately $100,000. This consideration is made all the more significant in light of the fact that the Clerk has indisputably already received still another fee for handling this money; this other fee being in the amount of $9,228.74, and being calculated upon the strength of *Florida Statute* 28.24. Such Statute provides for certain service charges by the Clerk including a charge "for receiving money into the registry of Court." Thus, if the Clerk may keep both interest accrued and the service charge, the creditors will receive less money from

the Court than was originally paid into its registry, a manifestly unjust and inequitable result.

WHERFORE, the undersigned Receiver requests that this Court enter an Order instructing the Honorable Clerk of this Court, Arthur H. Beckwith, Jr., to deliver to him the sum of $91,474.71 for deposit by the Receiver in interest-bearing accounts for the benefit of creditors herein. Further, the undersigned Receiver requests that this Court also Order that the Clerk deliver to him all interest accrued upon such $91,474.71 since July 21, 1977.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to all individuals on Schedule "A" attached hereto as well as to the Honorable Arthur H. Beckwith, Jr., Seminole County Courthouse, Sanford, Florida, this 14th day of March, 1978.

LAW OFFICES OF ALPER & WACK

BY: /s/ Harvey M. Alper
HARVEY M. ALPER, ESQUIRE
165 Whooping Loop
Altamonte Springs, Forida 32701
305/831-4339
As Receiver

[Schedule "A" Of Those Service Omitted In Printing]

[Title Omitted In Printing]

FIRST SUPPLEMENT TO RECEIVER'S FIRST AMENDED MOTION FOR DIRECTION TO CLERK TO REMIT CERTAIN MONIES TO RECEIVER

COMES NOW Harvey M. Alper, Esquire, Receiver, and for supplement to his First Amended Motion for Direction to Clerk to Remit Certain Monies to Receiver, says:

1. The retention of interest earned on the receivership fund (the monies deposited into the registry of this Court) by the Clerk of this Court constitutes the imposition of an illegal and unconstitutional tax. Such tax is ultimately imposed and used for the benefit of County government.

WHEREFORE, the undersigned Receiver files this Supplement and renews his request that this Court enter an Order instructing the Honorable Clerk of this Court, Arthur H. Beckwith, Jr., to deliver to him the sum of Ninety One Thousand Four Hundred Seventy Four and 71/100 ($91,474.71) Dollars for deposit by the Receiver in interest-bearing accounts for the benefit of creditors herein. Further, the undersigned Receiver requests that this Court also Order that the Clerk deliver to him all interest accrued upon such Ninety One Thousand Four Hundred Seventy Four and 71/100 ($91,474.71) Dollars since July 21, 1977.

I HEREBY CERTIFY that a true copy of the foregoing was furnished by U.S. Mail to all parties listed on the attached Schedule "A" this 7th day of June, 1978, and by hand delivery to Harry A. Stewart.

/s/ Harvey M. Alper
HARVEY M. ALPER, ESQUIRE
LAW OFFICES ALPER & WACK
165 Whooping Loop
Altamonte Springs, Florida 32701
(305) 831-4339

IN THE CIRCUIT COURT IN AND FOR THE EIGHTEENTH JUDICIAL CIRCUIT, SEMINOLE COUNTY, FLORIDA.

CIVIL ACTION NO. 76-354-CA-17-EE

ECKERD'S OF COLLEGE PARK, INC.,

Plaintiff,

vs.

WEBB's FABULOUS PHARMACIES, INC., et al.,

Defendants.

---/

ORDER

This cause came on to be heard on the Receiver's First Amended Motion for Direction to Clerk to Remit Certain Monies to Receiver (Record, Page 1134), together with Receiver's Memorandum in Support of Receiver's First Amended Motion for Direction to Clerk to Remit Certain Monies to Receiver (Record, Page 1223), Errata Sheet to Receiver's Memorandum in Support of Receiver's First Amended Motion for Direction to Clerk to Remit Certain Monies to Receiver (Record, Page 1225), Memorandum in Opposition to Receiver's First Amended Motion for Direc-

tion to Clerk to Remit Certain Monies to Receiver (Record, Page 1251), and Receiver's Memorandum in Reply to Memorandum in Opposition to Receiver's First Amended Motion for Direction to Clerk to Remit Certain Monies to Receiver (Record, Page 1262). Having carefully considered said Motion, Memoranda, and Errata the Court finds and it is accordingly

ORDERED AND ADJUDGED that the Clerk of this Court is not entitled to any interest earned, accrued or received on monies deposited in the registry of this Court pursuant to the Court's order recorded July 12, 1976 in Official Records Book 1091, Page 0494, of the Public Records of Seminole County, Florida; the creditors herein are the rightful parties entitled to all such interest earned on the interpleader fund while it is held by the Clerk of this Court. It is further

ORDERED AND ADJUDGED that having determined only those issues listed in Paragraphs c. and 3. of the Limited Order of Recusal entered June 20, 1978, and the Order of Reassignment entered by the Chief Judge [on] June 26, 1978, the undersigned hereby defers to the Honorable Dominick J. Salfi, the Judge regularly assigned to this case, determination of whether to grant the aforementioned Receiver's First Amended Motion for Direction to the Clerk to Remit Certain Monies to Receiver. [sic]

DONE AND ORDERED in Chambers at Sanford, Seminole County, Florida, this 24th day of July, 1978.

/s/ Kenneth M. Leffler
Kenneth M. Leffler
CIRCUIT JUDGE

[Certificate Of Service Omitted In Printing]

[Title Omitted In Printing]

RECEIVER'S MOTION FOR NUNC PRO TUNC ORDER CORRECTING OMISSION FROM THE RECORD

Receiver Harvey M. Alper moves this Court, pursuant to *Fla.R.Civ.P.* 1.540(a) and *Fla.App.Rule* 9.130(f) or 9.600(a), for a nunc pro tunc order setting forth the grounds upon which it determined by Order dated July 24, 1978, that the creditors herein are the rightful parties entitled to all interest earned on the interpleader fund while deposited in the registry of the Court, and particularly whether the Court directly passed on the validity of *Florida Statutes* §28.33 or expressly construed a provision of the State or Federal Constitution in the rendition of said Order, and as grounds therefore, shows the Court as follows:

1. Pursuant to the Limited Order of Recusal entered herein on June 20, 1978, the Honorable Kenneth M. Lefler entered an Order on July 24, 1978, finding that the creditors herein, not the Clerk of this Court, are entitled to the interest earned on the interpleader fund while deposited in the Registry of this Court. This Order omitted to set forth the grounds upon which it was based.

2. By Order dated August 1, 1978, this Court directed the Clerk of the Circuit Court to deliver the monies in dispute to the Receiver.

3. On August 9, 1978, Defendant Arthur H. Beckwith, Jr., Clerk of the Circuit Court and Defendant Seminole County, Florida filed a Notice of Appeal to the Fourth District Court of Appeals herein, appealing the Orders rendered July 24, 1978 and August 1, 1978. On August 9,

1978, these Defendants filed an Amendment to Notice [of] Interlocutory Appeal. [sic]

4. In his motions and memoranda filed herein, the Receiver has asserted that *Florida Statutes* §28.33 is unconstitutional as it pertains to deposits in the Court Registry for a number of reasons, including that it directs the taking of private property without due process of law, that it violates the constitutional separation of powers between the legislative and judicial branches, and that it provides for an unconstitutional tax. In the alternative, the Receiver has asserted that a proper construction of the above described constitutional limitations as they pertain to *Florida Statutes* §28.33 would also require a finding for the Receiver herein.

5. Without knowing the basis of the Court's Order of July 24, 1978, the Receiver is uncertain whether the Supreme Court of Florida or Fourth District Court of Appeal is the proper appellate forum for the appeal taken herein. If the Court's Order was based on the invalidity of *Florida Statutes* §28.33 or an express construction of a provision of the State or Federal Constitution, then the Supreme Court of Florida and not the Fourth District Court of Appeals would be the proper appellate forum for the appeal filed by the Defendants herein. See *Fla.App.-Rule* 9.030.

6. Although a trial court is not required to state grounds of reasoning in its orders, in cases such as this, where such grounds may be determinative of the proper appellate forum, fairness to litigants and appellate courts make this important and desirable. See *Suratt v. Fleming,* 309 So.2d 614 (Fla., 1975, 1st DCA); *Cohen v. State,* 121 So.2d 155 (Fla., 1960).

7. This Court presently has concurrent jurisdiction with the Fourth District Court of Appeal to render Orders on procedural matters relating to this cause. See *Fla.App. Rule* 9.130(f) or 9.600(a) and *Fla.R.Civ.P.* 1.540(a). Until such time as jurisdiction of this cause rests exclusively with the Fourth District Court of Appeal, this Court has authority to correct omissions in the record on its own initiative or on the motion of any party. See *Fla.R.Civ.P.* 1.540(a): 2 *Fla.Jur.*, Appeals §136 (1963); *Liberman v. Rhyne,* 248 So.2d 242 (Fla., 1971, 3 DCA).

8. Inasmuch as the Honorable Kenneth M. Leffler, pursuant to the Limited Order of Recusal entered on June 20, 1978, determined the issue of entitlement to the money in dispute herein, this Motion is directed to the Honorable Kenneth M. Leffler.

9. Failure to grant this Motion could unduly prejudice all parties to the pending appeal. If the basis for this Court's Order of July 24, 1978, would vest appellate jurisdiction in the Supreme Court of Florida, then failure to include such basis in the record herein could result in the parties having to undertake the pending appeal at two appellate levels instead of one.

WHEREFORE, Receiver Harvey M. Alper prays that this Court enter a Nunc Pro Tunc Order setting forth the grounds for its Order of July 24, 1978 and particularly whether or not this Court directly passed on the validity of *Florida Statutes* §28.33 or expressly construed a provision of the State or Federal Constitution in arriving at such decision.

LAW OFFICES OF ALPER & WACK

BY: /s/ William H. Wack
HARVEY M. ALPER, ESQUIRE
165 Whooping Loop
Altamonte Springs, Florida 32701
305/831-4339
As Receiver

[Certificate Of Service Omitted In Printing]

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR SEMINOLE COUNTY, FLORIDA.

CASE NO. 76-354-CA-17-EE

ECKERD'S OF COLLEGE PARK, INC.,

Plaintiff,

vs.

WEBB'S FABULOUS PHARMACIES, INC., ET AL.,

Defendants.

_____/

ORDER

THIS CAUSE having come on to be heard on August 23, 1978, on the Receiver's Motion for Nunc Pro Tunc Order Correcting Omission from the Record and the Court being fully advised in the premises, finds, as follows:

1. Pursuant to Florida Rule of Civil Procedure 1.540(a) and Florida Appellate Rule 9.130(f), this Court has jurisdiction pending appeal to amplify its Order, dated July 24, 1978, by setting forth the grounds upon which such Order was based. It is particulary incumbent upon this Court to do so in light of the constitutional issues raised herein which may be determinative of the proper appellate forum for the pending appeal.

2. The Order, dated July 24, 1978, and entered by the undersigned Judge, is amended nunc pro tunc by the addition of the following language:

> ORDERED and ADJUDGED that Florida Statutes § 28.33 and Laws of Florida, Chapter

73-282 are unconstitutional to the extent that the provisions thereof pertain to private monies held in the registry of the court in pending litigation and specifically to those monies held in the registry of the court in this case.

DONE and ORDERED in Chambers at the Courthouse in Sanford, Florida, this 23d day of August, A.D., 1978.

/s/ Kenneth M. Leffler
Kenneth M. Leffler
CIRCUIT JUDGE

[Certificate of Service and Approval As to Form By Counsel Omitted In Printing]

[Title Omitted In Printing]

SECOND AMENDMENT TO NOTICE OF APPEAL

NOTICES filed August 9, 1978, and August 10, 1978, and August 10, 1978, are hereby amended to read that Defendants, ARTHUR H. BECKWITH, JR., CLERK OF THE CIRCUIT COURT, and SEMINOLE COUNTY, FLORIDA, appeal to the District Court of Appeal, Fourth District, the Orders of this Court rendered July 24, 1978, August 1, 1978, and August 23, 1978. The nature of the Orders are final, declaring Section 28.33, Florida Statutes, to be unconstitutional, determining the right to immediate possession of property and directing the Clerk of the Circuit Court to deliver the sum of $91,474.71, plus any accrued interest to Receiver, HARVEY M. ALPER.

I HEREBY CERTIFY that a true and correct copy of the above have been furnished by U.S. Mail this 24th day of August, A.D., 1978, to all counsel listed on the attached Schedule "A."

/s/ Harry A. Stewart
HARRY A. STEWART, ESQUIRE
County Attorney
Room 302
Seminole County Courthouse
North Park Avenue
Sanford, Florida 32771
Telephone: (305) 323-4330
Attorney for Defendants
Beckwith and Seminole County

[Schedule "A" Of Those Served Omitted In Printing]

The decision of the Supreme Court of Florida in this cause appears in the Appellants Jurisdictional Statement at Appendix C thereof, as well as at 374 So2d 951-953 (1979). The decision also appears as Appendix A attached to Appellants brief.